IN THE SENIOR COURTS OF BELIZE

NORTHERN DISTRICT

IN THE HIGH COURT OF JUSTICE

BAIL APPLICATION NO.: 365/2024

IN THE MATTER OF KAREEM BEEKS, a Prisoner awaiting Trial

And

IN THE MATTER OF Sections 106 and 117 of the Criminal Code, Cap. 101 of the Substantive Laws of Belize Revised Edition 2020

IN THE MATTER OF Section 62 of the Indictable Procedure Act, Cap 96 of the Substantive Laws of Belize Revised Edition 2020

IN THE MATTER OF Section 5(5) of the Belize Constitution, Cap 4 of the Substantive Laws of Belize Revised Edition 2020

Before:

The Honourable Mr. Justice Raphael Morgan

Appearances:

Ms. Sherigne Rodriguez for the Petitioner

Ms. Dovini Chell for the Crown/Respondent

2024: September 20th

RULING ON APPLICATION FOR BAIL – BREACH OF CONSTITUTIONAL RIGHT TO TRIAL WITHIN A REASONABLE TIME

[1] **MORGAN, J.:** Kareem Beeks ("the Petitioner") was charged on the 16th October 2021 for the murder of Jovan Augustine contrary to section 106, read along with section 117 of the **Criminal Code**[1] ("the Code"). The incident is alleged to have occurred on the 16th October 2021.

[2] The Petitioner's Preliminary Inquiry concluded on the 2nd March, 2023. The indictment was filed on the **3rd July 2023** but the matter has not yet been listed for hearing. As a result the Petitioner is still to be arraigned and his matter has not yet been case managed before a Judge of the High Court. The Petitioner has thus been in custody for roughly two years and eleven months to date without a trial and continuing.

[3] By Application dated the 1st July 2024, the Petitioner applied for bail on the basis that his constitutional right to a fair hearing within a reasonable time pursuant to section 6(2) of **the Constitution of Belize**[2] (the Constitution) to trial within a reasonable time has been breached by the Crown. The Petitioner further prayed that as a result of the breach he is entitled to bail on reasonable conditions pursuant to section 5(5) of the Constitution and should so be admitted to bail.

[4] The Court invited further evidence from the parties on the cause of the breach of the reasonable time guarantee and also heard submissions from both sides.

[5] The Court now proceeds to rule on the Petitioner's application.

Law

Breach of the reasonable time guarantee under the Constitution and the grant of Bail

[6] **Section 6(2)** of the Constitution provides as follows:

> "6(2) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law."

[7] The Constitution further provides in **section 5(5)** as follows:

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[1] Chapter 101 of the Substantive Laws of Belize, Revised Edition 2020.
[2] Chapter 4 of the Substantive Laws of Belize, Revised Edition 2020

> **"5 (5)** If any person arrested or detained as mentioned in subsection (3) (b) of this section is not tried within a reasonable time, then without prejudice to any further proceedings that may be brought against him, he shall, unless he is released, be entitled to bail on reasonable conditions."

[8] When these two sections are read together, it is clear that an essential component of the fair hearing rights contained within the Constitution is the right to a trial within a reasonable time. Should that right be breached, one of the express remedies provided for in the Constitution is the entitlement of the Accused to bail on reasonable conditions.

[9] The nature of the reasonable time guarantee set out in **section 6(2)** was discussed by our apex court, the Caribbean Court of Justice (CCJ) while considering a similar constitutional provision from Barbados, **section 18(1)** of their Constitution, in the case of **AG v Gibson**[3], per Saunders and Wit JCCJ:

> *"[48] The public have a profound interest in criminal trials being heard within a reasonable time. Delay creates and increases the backlog of cases clogging and tarnishing the image of the criminal justice system….*
>
> ***[49] Even more telling than the societal interests at stake are the consequences to an accused of a breach of the reasonable time guarantee. This is evident in the case of a defendant who is not guilty. That person is deprived of an early opportunity to have his name cleared and is confronted with the stigma, loss of privacy, anxiety and stress that accompany exposure to criminal proceedings. But a defendant facing conviction and punishment may also suffer, albeit to a lesser extent, as he is obliged to undergo the additional trauma of protracted delay with all the implications it may have for his health and family life…By deliberately elevating to the status of a constitutional imperative the right to a trial within a reasonable time, a right which already existed at common law, the framers of the Constitution ascribed a significance to this right that too often is under-appreciated, if not misunderstood.***
>
> *…*
>
> *[59]…The question therefore is what should the appropriate remedy be when there is a breach of the reasonable time guarantee?*
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> *[60] In answering this question a court must weigh the competing interests of the public and those of the accused and apply principles of proportionality. One starts with the premise that the executive branch of government has a constitutional responsibility to allocate sufficient resources to ensure that the reasonable time guarantee has real and not just symbolic meaning. A governmental failure to allocate adequate resources,* ***or for that matter inefficiencies within the justice sector, could not excuse clear breaches of the guarantee*** *…*
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> *[61] When devising an appropriate remedy a court must consider all the circumstances of the particular case, especially the stage of the proceedings at which it is determined that there has been a breach."*

[3] [2010] 5 LRC 486.

[10] It is to be noted that Belize has a similar constitutional terrain to Barbados. The equivalent of their **Section 13(3)** is our **Section 5(5)** and their enforcement provision to protect constitutional rights at their **Section 24(1)** is our **Section 20(2)**. The Barbadian **section 13(3)** however is in one way materially different as that section **requires** the release on bail of the Accused while our **section 5(5)** stops short of mandating the release of the Accused person but confers upon them an entitlement to bail on reasonable conditions.

[11] Findings of a breach of the reasonable time guarantee can only be made on an analysis of the facts of the particular matter. Such a finding also cannot be reached by applying a mathematical formula. However the lapse of a significant amount of time between charge and trial gives rise to a rebuttable presumption that there has been undue delay. The Court in **Gibson** emphasized that the finding of a breach is an exercise that the Court must consider in the round taking into account a number of factors:

> "[58] A finding that there has indeed been unreasonable delay in bringing the accused to trial must be made on a case-by-case basis. It cannot be reached by applying a mathematical formula, although the mere lapse of an inordinate time will raise a presumption, rebuttable by the state, that there has been undue delay. **Before making such a finding the court must consider, in addition to the length of the delay, such factors as the complexity of the case, the reasons for the delay and specifically the conduct both of the accused and of the state. An accused who is the cause and not the victim of delay will understandably have some difficulty in establishing that his trial is not being heard within a *reasonable* time. One must not lose sight of the fact, however, that it is the responsibility of the state to bring an accused person to trial and to ensure that the justice system is not manipulated by the accused for his own ends. Even where an accused person causes or contributes to the delay, a time could eventually be reached where a court may be obliged to conclude that notwithstanding the conduct of the accused the overall delay has been too great to resist a finding that there has been a breach of the guarantee** (see for example *Boolell v R* [2006] UKPC 46, [2007] 2 LRC 483)" [emphasis mine].

[12] In **Gibson**, the CCJ further indicated that when faced with a breach of the reasonable time guarantee the Court must have regard to the Constitutional remedy of bail in construing what would be the appropriate remedy in the situation[4]. This approach was endorsed by the CCJ when considering section 5(5) of our Constitution in **Solomon Marin v The Queen (2021) CCJ 16 (AJ) BZ**.

[4] Gibson ibid at para 64

[13]Section 62 of the **Indictable Procedure Act**[5] (**the IPA**) provides that a Judge has the power to admit to bail any person who has been charged with a crime whether they have been committed to stand trial or not. The grant of bail is not restricted by the type of offence and includes the offence of Murder. Section 62 represents a codification of the powers of a Judge at common law to grant bail for any offence including the most serious crime of Murder, the power to grant bail for Murder being a power which has always been vested in Judges under the common law although rarely exercised. This was confirmed by the Privy Council in the Trinidadian case of ***Akili Charles v The State***[6].

[14]A Judge therefore exercising their powers under **section 62** of **the IPA** can admit an Accused whose right to trial within a reasonable time has been breached to bail. The Judge must first determine whether the right has actually been breached as it is this condition precedent which triggers the entitlement to bail. If there has been no breach the application can go no further. If however the Court determines that there was a breach then the Court must go on to consider whether the Accused should be admitted to bail.

[15]The Court notes that **section 16(3)** of the Crime Control and Criminal Justice Act[7] (the CCCJA) provides that the Supreme Court can grant bail under the CCCJA for any offence **other than murder**. **Section 16(3)** however is inapplicable to applications such as these where the basis is breach of the reasonable guarantee for several reasons:

a) Firstly, the jurisdiction of the Court to grant bail under the CCJA is triggered by the refusal of bail initially by the Magistrate. In applications for bail as a constitutional relief the trigger is the lapse of an unreasonable amount of time passing before the Petitioner's matter is heard.

b)Secondly, even if section 16(3) was applicable, the Constitution being the supreme law of the land would trump any statutory instrument made by Parliament in exercise of its powers under the Constitution. The Constitutional entitlement to bail by the Petitioner because of the aforementioned breach would therefore trump the prohibition contained in **section 16(3)**.

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[5] Chapter 96 of the Substantive Laws of Belize, Revised Edition 2020

[6] [2022] UKPC 31 paras 26-37

[7] Cap 102 of the Substantive Laws of Belize Revised Edition 2020

Principles applicable to the grant of Bail for Murder

[16] There are no special principles applicable to the grant of Bail for Murder. As with all bail applications, the central question that ought to occupy the mind of a Court considering such an application is **"if the Accused is admitted to bail, will he attend Court when required?"** There are several considerations which may inform the answer to that central question and these generally are:

a) Nature, Seriousness and prevalence of the Offence
b) The potential penalty faced by the Accused if convicted
c) The Character, antecedents, associations and social ties of the Accused
d) The Accused's record of attendance to court under previous bail obligations
e) The strength of the evidence of his having committed the offence
f) The risk that if the Accused is released on bail he may interfere with the witnesses for his trial
g) The risk that the Accused may commit other offences whilst on bail
h) Any other relevant factor or circumstance

Depending on the nature of the offence and the particular circumstances of each case, some considerations may carry significantly more weight than others.

[17] For example, in the case of Murder, Cussen J noted in **R v Sefton**[8] as follows:

> "Having regard to the nature of the charge and to the punishment, which, subject to the action of the executive, is death, **if the evidence is of such a character as to render it probable or possible that the prisoner will be convicted, bail is rarely granted**." (emphasis mine)

[18] Similarly in **Etiene Barronett and Edmund Allain**[9] while indicating his reasons for refusing to grant bail Coleridge J indicated the following:

> "…I do not think that an accused party is detained in custody because of his guilt but because there are sufficient probable grounds for the charge against him, so as to make it proper that he should be tried, and

[8] CR 0109/2006
[9] 1EL & BL 2

> because the detention is necessary to insure his appearance at the trial. **The guilt of the party charged is not the direct ground on which he is detained in custody; and that the strength of guilt, even when it amounts to a confession, is not conclusive as to the propriety of bailing. But it is a very important element in considering whether the party, if admitted to bail, would appear to take his trial; and I think that in coming to a determination on that point, three elements will generally be found the most import: The charge, the nature of the evidence by which it is supported, and the punishment to which the party would be liable if convicted**." [emphasis mine]

[19] It should still be noted, however, that none of the considerations listed above by themselves are determinative in the exercise of the Court's discretion to grant or refuse bail. They are simply factors relevant to the exercise of the Court's discretion whether in all the circumstances it is necessary to deprive the Applicant of his liberty.

[20] Bail should properly only be refused in circumstances where there are reasonable grounds for believing that there will be a failure to submit to custody and this cannot be effectively eliminated by the imposition of appropriate conditions.

[21] Lord Bingham's observation in **Hurnam v The State**[10] encapsulates this approach:

> "**it is obvious that a person charged with a serious offence, facing a severe penalty if convicted, may well have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him…Where there are reasonable grounds to infer that the grant of bail may lead to such a result, which cannot be effectively eliminated by the imposition of appropriate conditions, they will afford good grounds for refusing bail**…" [emphasis added]

[22] The Court must therefore must look at the all of the circumstances in the round, ascribing appropriate weight to the relevant considerations and decide whether the Accused person will be admitted to bail.

[10] [2005] UKPC 9

Submissions by the Petitioner

[23] The Petitioner's main submission is that there has been a breach of the reasonable time guarantee as the Crown has failed to abide by any of the timelines set out in the Criminal Procedure Rules 2016 for the duration of either Preliminary Inquiries or Indictable Trials.

[24] Specifically the Petitioner drew to the Court's attention CPR rule 2.3(iii) which prescribes that the Preliminary Inquiry for any accused person ought to begin within 26 weeks of the 1st date of hearing. Further, the Court was also directed to CPR rule 2.3 (viii) which prescribes that subject to Rules 2.8 and Rule 9.2[11] that a trial should take place within 2 years of the Accused person being arraigned at the High Court. Notably Rule 2.8 prescribes that where a person is in custody their trial should take place within 6 months of arraignment hearing.

[25] The Petitioner further submitted that should the Court find a breach and hold that the Petitioner is entitled to bail, the Petitioner should be admitted to bail as he has sufficient social ties to the community being a Belizean National and father of seven children and any risk of him not surrendering to court due to the nature and seriousness of the offence and the potential penalty that he faces can be mitigated by the Court imposing stringent conditions.

Crown's Submissions

[26] The Crown conceded that there has been a failure to comply with the CPR timelines. Interestingly, the Crown offered no explanation for why the Preliminary Inquiry took place 1 year and 4 months after the Petitioner was initial charged. By way of explanation as to why the Petitioner has not yet been tried before the High Court, the Crown indicated that the indictment has been filed since the 3rd of July 2023 but that despite their best efforts they have not yet been provided with a hearing date by the Registrar of the High Court.

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[11] Prescribes timelines for the preferring of the Indictment by the Director of Public Prosecutions

[27] The Crown submitted that notwithstanding the failure to comply with the timelines that there hasn't been a breach of the reasonable time guarantee. In support of that submission the Crown relied heavily on the judgement of our Court of Appeal in **Linsbert Bahadur v The Queen**[12] where the Court of Appeal accepted the submission by the Crown that four years is an average time to wait for a trial in Belize.

[28] The Crown also submitted that even if the Court finds that there has been a breach of the reasonable time guarantee and the Petitioner is entitled to bail, he should not be admitted to bail. The nub of the Crown's argument being that the Nature and seriousness of the offence, the potential penalty faced by the Petitioner along with the strength of the evidence which they say makes it possible that the Petitioner may be convicted, provide reasonable grounds for the Petitioner to be refused bail.

[29] The Crown further argued that the imposition of strong conditions would not ameliorate that risk sufficiently and accordingly the Court should exercise its discretion to refuse to grant bail.

Analysis

Breach of the reasonable time guarantee

[30] With respect to the allegations of breach of the Petitioner's reasonable time guarantee the following facts are undisputed:

a) The Petitioner has been in custody for 2 years, eleven months and continuing since the date of his arrest and charge.

b) There has been a significant failure to comply with the CPR timeline for the holding of the Preliminary Inquiry of the Petitioner and

c) There is also a continuing failure to comply with the CPR timeline for the holding of the trial of the Petitioner where the Petitioner although indicted has yet to even be afforded a hearing before a Judge of the High Court.

[12] Criminal Appeal no 10 of 2016

Is the Court bound by the statement of the Court of Appeal in Linsbert Bahadur v The Queen that four years is the average wait time for a trial in Belize?

[31] Much has been argued in this application about the binding nature of the statement of the Court of Appeal in **Bahadur** that the average wait time for a trial in Belize is four years. If this Court finds that it is bound by that statement then it follows that the time that the Petitioner has spent awaiting trial thus far, which is less than four years, would not in all the circumstances be unreasonable and the application of the Petitioner must fail. Should the Court find that it is not bound, the Court will then go on to examine whether in light of all the facts before it, the Petitioner's reasonable time guarantee has been breached.

[32] This Court as a court of 1st instance is bound by the *ratio decidendi* or reasoning of decisions of our higher Courts such as the Court of Appeal and our apex court the CCJ. Such is the binding force of precedent and the nature of the doctrine of *stare decisis*. Statements which are made in passing and do not form part of the reasoning of their decisions are *obiter dicta* and generally not binding. However, even if statements are *obiter*, if they were made after considerable argument by Counsel and deliberation by the Court, while not strictly binding, they can carry significant weight[13].

[33] With that in mind the Court has carefully examined the judgement of the Court of Appeal in **Bahadur**. In **Bahadur** the Appellant alleged *inter alia* that the judge failed to stay the trial because there had been an abuse of process due to unreasonable delay. The Court of Appeal, on this point, found that there had not been an abuse of process as although there had been a delay of 10 years and two months (conceded as presumptively prejudicial by the Crown) as the Appellant had failed to show any misconduct on the part of the prosecution nor was there any actual prejudice shown by the Appellant. In the course of holding that there was no abuse of process and in deciding that there was no misconduct on the part of the Crown, the Court accepted the **suggestion** from the Crown that 4 years is the average wait time for a trial in Belize.

[13] Per Megarry J in Brunner v Greensdale [1970] 3 ALL ER 833 at 839

[34] The Court considers that the acceptance of the 4 year period by the Court of Appeal in **<u>Bahadur</u>** is *obiter dictum* for the following reasons:

a) The issue before the Court was not whether there had been a breach of **section 6(2)** of the Constitution. The Appellant in Bahadur had multiple trials before his appeal, the first of his trials actually starting within three years of him first being indicted. So there was no issue of unreasonable delay in having his trial heard.

b) Looking at the judgement of the Court of Appeal, there does not appear to have been considerable argument or assistance to the Court from both sides on the issue of what constitutes the average wait time for trial in Belize either.

c) Further, in accepting the Crown's submission the Court of Appeal was clearly not intending to lay down a binding mathematical benchmark in perpetuity for what would be considered as unreasonable delay as that issue was not before the Court. In any event such an approach would be at odds with the decisions of the CCJ in **<u>Gibson</u>** and **<u>Marin</u>** which provide that any finding of unreasonable delay comes from a contextual analysis of the specific facts before the court in order to see whether the right had been breached.

[35] Accordingly, this Court does not consider that it is bound by the acceptance of the Court of Appeal in **<u>Bahadur</u>** of 4 years as the average wait time for a trial in Belize. The Court will now go on to examine the particular circumstances of this case in order to determine whether the Petitioner's reasonable time guarantee has been breached.

[36] Looking at the facts of this case in the round on the issue of unreasonable delay, the Court finds that there has been a breach of the Petitioner's reasonable time guarantee under the Constitution. The Court makes this finding particularly against the repeated and continuing breaches by the Crown of the timelines under the Criminal Procedure Rules. The Criminal Procedure Rules were introduced in 2016 with the intention to streamline and add efficiency to the criminal justice landscape in Belize. In that regard the drafters included within the Rules timelines for the conduct of criminal trials at both the summary and the indictable stage. While there would necessarily be a transitional period during which such timelines have to be implemented, it has now been eight years since the CPR was introduced and the timelines contained within ought to be respected. The Petitioner's preliminary inquiry was held some

eight months after it was mandated by the CPR and the Petitioner has yet to have a hearing before the High Court despite being indicted over a year ago. **<u>The Court is also acutely aware that even when the Petitioner's matter is listed before the High Court, it must still be case managed and join the queue of matters already awaiting trial before the High Court. This necessarily means that the Petitioner's wait for his day in Court and the resolution of his fate is likely to extend beyond three years</u>**.

[37] The Court is careful to point out that it is not saying that in every case where the timelines are not adhered to will result in a finding that there has been unreasonable delay but in this case there has been no explanation offered for the delay in adhering to the timelines of the CPR. Neither has any fault been laid at the feet of the Petitioner. The case against the Petitioner is also not complex. Further, the majority of the witness statements and the forensic report necessary to purportedly link the Petitioner to the commission of the Offence were obtained by November 2021.

[38] The Court's finding of unreasonable delay is fortified by Belize's adoption of the **CCJ Academy for Law's Needham's Point Declaration** which provides aspirational timelines for the completion of summary and indictable matters as an approach to improving the collective efficiency of regional criminal justice systems. **Recommendation 19** provides:

> That as a rule, **<u>trials should be held within one (1) year of the accused being charged (for indictable offences)</u>** and six (6) months (for summary offences). **<u>During the necessary transitional stage to this ideal, trials should be held within two (2) to three (3) years of the accused being charged (for indictable offences)</u>** and twelve (12) months (for summary offences).

[39] While not binding, this recommendation represents a best practice against which our current criminal justice system efficiency ought to be evaluated, and our individual courts should seek to aspire to. It is also not lost on the Court that the proposed transitionary timelines within the Needham's Point Declaration dovetail with the prescribed timelines within the CPR. Delays of this kind affect all parties in the criminal justice system from victims to the accused persons who all have to face the spectre of participating in criminal proceedings for such a protracted period of time without finality.

[40] The Court in all of the circumstances is constrained to hold that there has been a breach of the Petitioner's reasonable time guarantee under the Constitution.

Bail

[41] In light of the Court's finding that the Petitioner's reasonable time guarantee has been breached, the Court further finds that the Petitioner has a constitutional entitlement to bail on reasonable conditions pursuant to section 5(5) of the Constitution. The Court must therefore consider the Petitioner's bail application and decide whether the Petitioner should be admitted to bail.

[42] The Court will approach this aspect of the application as follows:

a) The Court begins from the position that the Petitioner has a constitutional entitlement to bail arising out of the breach of his reasonable time guarantee. The burden is therefore on the party opposing the grant of bail to show that there are reasonable grounds for bail to be denied.
b) The Court must assess whether there are in fact reasonable grounds for bail to be denied.
c) Even if the Court is of the opinion that there are reasonable grounds for the denial of bail, the Court must then consider whether the reasonable grounds can be mitigated or managed by the imposition of appropriate conditions. It is only if the reasonable grounds cannot be effectively ameliorated by the imposition of conditions that they may afford good grounds for the refusal of bail.

Reasonable Grounds for the denial of Bail

[43] On the facts, in answering the question of whether the Petitioner if released would attend court when required on the charge of Murder, three factors carry the greatest weight i.e. the nature and seriousness of the offence, the strength of the evidence to support the charge and the potential penalty faced by the Petitioner. The Court will proceed to analyse each in turn.

Nature and Seriousness of the Offence

[44] The Petitioner is charged with Murder which is the most serious offence in Belize and is quite prevalent with increasing murder rates each year. Naturally, in cases of murder and other serious offences, the

seriousness of the offence should weigh heavily in the scale against the grant of bail[14]. This therefore constitutes a reasonable ground for the denial of bail although certainly not determinative of the question of whether bail should be granted.

Potential Penalty faced by the Petitioner

[45] The Petitioner is facing a substantial sentence if convicted. Should the Petitioner be convicted at trial, the sentencing trend in Belize since the cases of **August and Gabb v The Queen** and **Michael Faux and others v The Queen**[15] has been the imposition of a custodial sentence. The sentences generally have been the imposition of a life sentence with a minimum term of 25-37 years before which the convicted person becomes eligible for release on parole. The Court also has the power to impose a fixed term where the range is usually 25-35 years[16]. The Court therefore considers that this constitutes a reasonable ground for the denial of bail.

The strength of the evidence

[46] In a nutshell the case for the Crown against the Appellant is on Saturday 16th October the deceased Jovani Augustine was standing behind a bus that was parked in front of #16 Curassow Street, Belize when a white Mitsubishi Gallant four door car fully tinted stopped beside the bus. A dark complexioned male person exited from the driver's side area, walked towards where Jovani Augustine was standing and shot him several times resulting in his death. Two eyewitnesses identified the Petitioner as the person in the Mitsubishi Gallant who shot in the direction of the deceased although they did not see the deceased being shot. One of these eyewitnesses is the former common law wife of the deceased and also the mother of three of the Petitioner's children. The other is a Police Officer who recognized the Petitioner from interacting with him often during patrols that he did around Belize City. The spent shells from the area where the deceased was killed were matched to a firearm that belonged to the then common law wife of the Petitioner who was a serving police officer and is the mother of two of his children.

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[14] Per Stanley John JA in Jonathan Armbrister v The AG (Bahamas) SCCr App no. 145 of 2011
[15] Criminal appeals nos. 24-26 of 2019
[16] Faux and others ibid paras 16-17

[47] The Court is well aware that when appraising the strength of the evidence on a bail application, a thorough in depth analysis is not what is required. Instead the Court is simply looking at the evidence to see whether it is probable or possible that the Petitioner may be convicted. If it is probable or possible then that affords a reasonable ground for the denial of bail.

[48] Counsel for the Petitioner submitted that the case for the Crown is weak as it is based on circumstantial evidence as neither of the eye witnesses saw the Petitioner shoot the deceased and forensic evidence that may or may not link the Petitioner to the scene. The Court does not agree with this submission. The Court has had the opportunity to peruse the witness statements and in the mind of the Court, the strength of the evidence is such that is possible or probable that the Accused may be convicted of the offence of Murder. Accordingly the Court finds that the strength of the evidence against the Petitioner affords a reasonable ground for the denial of bail.

Can the risk that the Petitioner will not appear for Court when required raised by the reasonable grounds identified above be mitigated or eliminated by the imposition of stringent conditions?

[49] The Court has considered whether the imposition of conditions would ameliorate or eliminate the risk that the Petitioner will not appear at Court when required posed by the reasonable grounds for the denial of bail identified above. In the mind of the Court, considering all of the circumstances, the imposition of stringent conditions or any conditions cannot eliminate such a risk. The Court is very mindful of the strength of the evidence and the potential penalty faced by the Petitioner. The Court also takes note that our borders are not air tight and that although the Petitioner does not hold any travel documents such as a passport, it is not impossible for him to leave the country and not return.

[50] As a result the Court finds that the grounds identified above constitute good grounds for the denial of the Petitioner's bail application. The bail application of the Petitioner is therefore refused.

Consequential orders

[51] As the Court has found that there was a breach of the Petitioner's reasonable time guarantee under the Constitution, the Court must consider, even if the bail application is denied, whether there are any other

remedies that could be afforded to the Petitioner to vindicate the breach of his constitutional rights. The Court must weigh the competing interests of the public against those of the Petitioner, apply principles of proportionality and take into account all the circumstances of the particular case especially the stage of the proceedings at which the breach occurred. In **Gibson** the CCJ indicated that if the breach occurs before trial the Court can consider expediting the hearing of the Petitioner's matter.

[52] In the instant matter, the breach of the reasonable time guarantee has occurred before trial. No application has been made for a stay of proceedings and in any even the Court does not think that a stay of the proceedings is an appropriate remedy at this time. The Court finds that in these circumstances an order expediting the Petitioner's hearing is the most appropriate remedy particularly in light of the denial of the Petitioner's bail application and will so order.

[53] The Court therefore orders that the Petitioner's indictment be listed for expedited hearing forthwith before a Judge of the High Court in the Central District on or before the 1st of October, 2024.

Raphael Morgan

High Court Judge

Dated: 30th May 2024